

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

**GEORGE STEWART, on behalf of himself and
others similarly situated,**

Plaintiffs,

v.

**TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER, et al.,**
Defendants.

Case No. 5:23-CV-00007-H

**SECOND UNOPPOSED MOTION OF DEFENDANTS THE UNIVERSITY OF TEXAS
AT AUSTIN, JAY HARTZELL, CLAUDIA LUCCHINETTI, STEVE SMITH, AND
JOEL DABOUB FOR AN EXTENSION OF TIME TO FILE AN ANSWER OR A
FIRST RESPONSIVE PLEADING**

Defendants The University of Texas at Austin, UT Austin President Jay Hartzell, Dell Medical School Dean Claudia Lucchinetti, Dell Medical School Associate Dean of Student Affairs Steve Smith, and Dell Medical School Director of Admissions Joel Daboub (collectively, “the UT Austin Defendants”) hereby move pursuant to Federal Rules of Civil Procedure 6(b)(1)(A) and 7(b)(1) for a second 60-day extension of time to file their answer or first responsive pleading. Plaintiff, George Stewart, is unopposed to this motion, and the Court should grant it.

FACTUAL BACKGROUND

Plaintiff’s suit alleges that the defendant medical schools unlawfully consider race and sex in their admissions processes. Compl. (Dkt. #1) at 8. The UT Austin Defendants are affiliated with Dell Medical School at The University of Texas at Austin, a component institution of the University of Texas System. *Id.* at 5. Eighteen additional defendants are other UT System

component institutions or officials affiliated with those institutions. *Id.* at 5-8. All of the defendants that are either components of the UT System or officials affiliated with those component institutions, including the UT Austin Defendants, are collectively referred to herein as “the UT System Defendants.” The other defendants are Texas Tech University Health Sciences Center and five TTUHSC officials. *Id.* at 3-4.

The UT Austin Defendants’ original deadline for filing an answer or other responsive pleading was March 13, 2023.¹ They moved for a sixty-day extension of that deadline based on difficulties in obtaining legal representation. UT Austin Defs.’ Mot. for Extension of Time (Dkt. #13) at 5. Specifically, their motion noted that on February 14, 2023, the Office of the Attorney General of Texas (“OAG”) stated that it was withholding a decision on UT System’s request for representation for the UT System Defendants. *Id.* at 3-4. The Court granted the motion “[b]ecause the plaintiff is unopposed to an extension, and for the reasons stated in the motion.” Order (Dkt. #14) at 1 (Mar. 2, 2023). The order extended the UT Austin defendants’ original deadline for filing an answer or other responsive pleading to May 12, 2023. *Id.*

UT System Counsel Dan Sharphorn has continued to engage high-level OAG officials regarding a resolution of UT System’s request for representation for the UT System Defendants in this case. To date, however, the OAG has declined to either provide representation or authorize the hiring of outside counsel for any of the UT System Defendants, including the UT Austin Defendants.

ARGUMENT AND AUTHORITIES

The UT Austin Defendants seek a second 60-day extension under Federal Rule of Civil Procedure 6(b)(1) of their March 13, 2023 deadline to file a pleading in response to Plaintiff’s

¹ The other defendants have neither been served nor waived service under Fed. R. Civ. P. 4(d).

Original Complaint. “An application under Rule 6(b)(1) normally will be granted in the absence of bad faith or prejudice to the adverse party.” *Koehler v. Dodwell*, No. 99-1776, 2000 WL 709578, at *3 (4th Cir. June 2, 2000) (quoting 4A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1165, at 475 (2d ed. 1987)). Good cause for a second extension exists because the OAG still has neither provided legal representation to the UT Austin Defendants (or any of the other UT System Defendants) nor authorized them to obtain outside counsel.

Further, Plaintiff’s non-opposition to the requested extension confirms that it will not prejudice his rights. Plaintiff’s non-opposition is consistent with his stated commitments to “consent to further extensions of the answer deadline if the defendants are unable to secure legal representation by May 12, 2023,” and to “agree to additional extensions of the deadline if the defendants or their counsel want to wait for the pending Supreme Court rulings in *Students for Fair Admissions v. President & Fellows of Harvard College*, No. 20-1199, and *Students for Fair Admissions v. University of North Carolina, et al.*, No. 21-707, before answering the complaint.” Pl.’s Resp. to Defs.’ Mot. to Abate (Dkt. #17) at 1 (Apr. 9, 2023). The Court denied the motion to abate “[b]ecause the plaintiff’s proposed solution reasonably addresses the UT Austin Defendants’ concerns.” In seeking this extension of their answer deadline, the UT Austin Defendants are following the path agreed to by the parties and implicitly approved by the Court.

In its February 14 letter, the OAG claimed that Plaintiff’s claims in this case concerning the alleged consideration of race and gender in medical school admissions are likely to be resolved by the U.S. Supreme Court’s decisions in the *SFFA* cases cited above. Those decisions are expected to be issued by the end of June, before the Court goes into recess for the summer. A sixty-day extension would extend the UT Austin defendants’ answer deadline to July 11, 2023, after the

latest date the *SFFA* cases are expected to be decided. The UT Austin Defendants remain hopeful that, after the *SFFA* cases are decided, the OAG will make a determination regarding UT System's request for representation for the UT Austin Defendants and the other UT System Defendants.

As previously noted, Plaintiff will not be materially prejudiced by the requested extension of the UT Austin Defendants' answer deadline. None of the UT System Defendants or TTUHSC Defendants have yet become parties to the litigation. To the extent he is seeking damages as a remedy for past decisions denying him admission to Dell Medical Center and the other defendant medical schools, an additional two-month delay will not impair his ability to seek that relief. Nor would the extension impair Plaintiff's ability to seek forward-looking injunctive relief. Plaintiff has not moved for a temporary injunction or a temporary restraining order, and it is extremely unlikely that a final judgment awarding permanent injunctive relief will issue before admissions decisions are made for the entering class of 2024. In short, the requested extension will not harm Plaintiff.

CONCLUSION

The Court should extend UT Austin Defendants' deadline to respond to Plaintiff's Original Complaint by 60 days, creating a new deadline of July 11, 2023.

Dated: May 1, 2023.

Respectfully submitted.

UNIVERSITY OF TEXAS AT AUSTIN

AMANDA COCHRAN-MCCALL
Deputy Vice President for Legal Affairs

/s/ Joseph D. Hughes

JOSEPH D. HUGHES
Associate Vice President for Legal Affairs
Texas Bar No. 24007410
(512) 475-7716
ESTEBAN SOTO
Associate Vice President for Legal Affairs
Texas Bar No. 24052284
2304 Whitis Avenue, Suite 438
Austin, Texas 78712
jody.hughes@austin.utexas.edu
esteban.soto@austin.utexas.edu

COUNSEL FOR DEFENDANTS
THE UNIVERSITY OF TEXAS AT AUSTIN,
JAY HARTZELL, CLAUDIA LUCCHINETTI,
STEVE SMITH, AND JOEL DABOUB

CERTIFICATE OF CONFERENCE

I hereby certify that on April 25, 2023, I conferred with Plaintiffs' counsel Jonathan Mitchell, who stated that he is unopposed to a 60-day extension of the UT Austin defendants' answer deadline. The other defendants are not yet parties because, to my knowledge, they have not yet been served or waived service of process.

/s/ Joseph D. Hughes
Joseph D. Hughes

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2023, the foregoing *UT Austin Defendants' Second Unopposed Motion for Extension of Time to File a Responsive Pleading* was electronically filed with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Joseph D. Hughes

Joseph D. Hughes